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LAWS ON SEX DISCRIMINATION IN EMPLOYMENT--FEDERAL CIVIL RIGHTS ACT, TITLE VII. STATE FAIR EMPLOYMENT PRACTICES LAWS.

WOMENS BUREAU, WASHINGTON, D.C. (DEPT. OF LABOR)
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TITLE VII OF THE FEDERAL CIVIL RIGHTS ACT (1964) PROHIBITS DISCRIMINATION ON THE BASIS OF SEX IN ADDITION TO THE USUAL GROUNDS OF RACE, COLOR, RELIGION, AND NATIONAL ORIGIN. IT COVERS PRIVATE EMPLOYMENT AND LABOR ORGANIZATIONS ENGAGED IN INDUSTRIES AFFECTING COMMERCE, AS WELL AS EMPLOYMENT AGENCIES. IT IS UNLAWFUL FOR EMPLOYERS TO REFUSE TO HIRE, TO DISCHARGE, OR OTHERWISE DISCRIMINATE IN REGARD TO COMPENSATION, TERMS, CONDITIONS, OR PRIVILEGES OF EMPLOYMENT. IT IS UNLAWFUL FOR LABOR UNIONS TO EXCLUDE, EXPEL FROM MEMBERSHIP, OR OTHERWISE DISCRIMINATE ON THE BASIS OF SEX, OR TO LIMIT, SEGREGATE OR CLASSIFY ITS MEMBERSHIP ON THAT BASIS. EMPLOYERS, LABOR ORGANIZATIONS, AND EMPLOYMENT AGENCIES CANNOT PRINT, PUBLISH, OR CAUSE TO BE PRINTED OR PUBLISHED ADVERTISEMENTS INDICATING PREFERENCE, LIMITATION, OR SPECIFICATION BASED ON SEX. NOR CAN THEY DISCRIMINATE IN ADMISSION TO OR EMPLOYMENT IN APPRENTICESHIP OR TRAINING OR RETRAINING PROGRAMS BASED ON SEX. MAJOR EXCEPTIONS TO PROHIBITED EMPLOYMENT PRACTICES ARE LISTED. OF THE 26 STATES, THE DISTRICT OF COLUMBIA, AND PUERTO RICO THAT HAVE MANDATORY FAIR EMPLOYMENT PRACTICES LAWS, 13 STATES PROHIBIT DISCRIMINATION BASED ON SEX. A CHART SUMMARIZES FEDERAL AND STATE LAWS. THE APPENDIX CONTAINS "GUIDELINES ON DISCRIMINATION BECAUSE OF SEX OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION" AND A PAPER ON THE "RELATIONSHIP BETWEEN FAIR EMPLOYMENT PRACTICES LAWS AND PROTECTIVE LABOR LEGISLATION FOR WOMEN." (FP)

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U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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LAWS ON SEX DISCRIMINATION IN EMPLOYMENT

FEDERAL CIVIL RIGHTS ACT, TITLE VII • STATE FAIR EMPLOYMENT PRACTICES LAWS

VT003864

U.S. DEPARTMENT OF LABOR — WOMEN'S BUREAU

APRIL 1967

LAWS ON SEX DISCRIMINATION IN EMPLOYMENT

FEDERAL CIVIL RIGHTS ACT OF 1964, TITLE VII

Title VII of the Federal Civil Rights Act, approved July 2, 1964, prohibits discrimination in private employment based on sex, in addition to the usual grounds of race, color, religion, and national origin. Effective July 2, 1965, the title is administered by a five-member bipartisan Equal Employment Opportunity Commission appointed by the President.

Coverage and Exemptions

Title VII covers private employment and labor organizations engaged in industries affecting commerce, as well as employment agencies, including the U.S. Employment Service system. In general, employers and unions with at least 100 employees or members, respectively, are covered during the first effective year of the act; 75 employees, during the second year; 50, during the third year; and 25, during the fourth year and thereafter.

Title VII exempts from coverage private membership clubs, religious educational institutions, employees of an educational or a religious institution who further the educational or religious activities of such institution, and Indian tribes.

Unlawful Employment Practices

Under title VII it is an unlawful employment practice:

For employers to refuse to hire, to discharge, or otherwise to discriminate against a person with respect to compensation, terms, conditions, or privileges of employment based on sex; to limit, segregate, or classify employees in such a way as to deprive any individual of employment opportunities or otherwise adversely affect the employee's status, based on sex;

For labor organizations to exclude, expel from membership, or otherwise discriminate against any individual based on sex; to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual in any way that would deprive or tend to limit employment opportunities, or otherwise adversely affect the employee's status based on sex;

For employers, labor organizations, or employment agencies to print, publish, or cause to be printed or published advertisements indicating preference, limitation, specification, or discrimination, based on sex;

For employers, labor organizations, or joint labor-management committees to discriminate in admission to or employment in apprenticeship or other training or retraining programs, based on sex.

Major Exceptions to Prohibited Employment Practices

Major exceptions to prohibited employment practices may be permitted when:

Sex is a bona fide occupational qualification reasonably necessary to the normal operation of the business.

Differentials in compensation, different terms, conditions, or privileges of employment are based on a seniority, merit, or incentive system.

Different wages are paid in different locations.

Differentials in wages or compensation are "authorized" by the Federal Equal Pay Act.

Differentials are based on ability tests that are not intended to discriminate. (See appendix A, Guidelines on Discrimination Because of Sex.)

Effect on State Laws

It is stated specifically that nothing in title VII shall relieve a person from any liability, duty, penalty, or punishment provided by any State law, other than a law that permits the doing of an act which would be an unlawful employment practice under the title. (See appendix B, part I, for EEOC policy as to relationship between title VII and State protective labor laws for women.)

STATE FAIR EMPLOYMENT PRACTICES LAWS

Of the 36 States,[1] the District of Columbia,[2] and Puerto Rico that have mandatory fair employment practices laws, 13 States[3] and the District of Columbia prohibit discrimination based on sex. Of these 14 laws, 10 are administered by an independent commission and 3--Hawaii, Utah, and Wisconsin --by a State agency; and 1-- Idaho --is enforceable in the courts as a misdemeanor.

In only 2 States--Hawaii and Wisconsin--were the prohibitions against discrimination based on sex enacted prior to the passage of the Federal Civil Rights Act of 1964. In 9 jurisdictions the laws were effective on varying dates in 1965; in Michigan the amendment prohibiting sex discrimination was effective in 1966; and in Idaho and Nevada the amendments prohibiting sex discrimination will be effective on specified dates in 1967.

Coverage and Exemptions

In addition to covering private employment, all but Hawaii, Maryland, Nebraska, Nevada, and the District of Columbia cover public employment.

In Maryland the law applies only to employers. In all other jurisdictions the law states specifically that employers, labor organizations, and employment agencies are covered.

In general, the exemptions follow those of title VII. All the jurisdictions except Hawaii, Idaho, Michigan, Missouri, New York, Wyoming, and the District of Columbia exempt private social clubs. All have some type of religious exemption--either the entire organization, a particular type of agency such as a religious educational agency, or only the employees of the organization whose work is connected with the propagation of the particular religion. In addition, all but Hawaii, Idaho, Wisconsin, and the District of Columbia exempt employers with less than a specified number of employers. Maryland and Nebraska follow exactly the Federal requirement for coverage, but in the other 8 States the requirements range from 2 or more employees in Wyoming to 25 or more in Missouri and Utah. Exemptions not allowed by the Federal law but included in State laws are: domestic service in 5 States--Massachusetts, Michigan, Nebraska, New York, Utah--and the District of Columbia; and family employment in 4 States--Massachusetts, Nebraska, New York, Wisconsin--and the District of Columbia.

Unlawful Employment Practices

In general, the employment practices prohibited by State laws are the same as those prohibited by the Federal law. In some instances the wording of State laws is slightly different from the wording of Federal law in that they may prohibit discrimination in promotions or tenure as well as in "terms, conditions, and privileges of employment." Utah is the only State that does not use the wording: "terms, conditions, and privileges of employment." Discriminatory advertising is prohibited in all the laws except those of Idaho, Maryland, Wisconsin, and Wyoming. Arizona, Missouri, Nebraska, Nevada, New York, Utah, and the District of Columbia specifically include training programs.

Major Exceptions

It is interesting to note that sex as a bona fide occupational qualification is an exception in all the jurisdictions except Maryland and Wyoming, which have no exceptions of any kind. Other exceptions include: differentials pursuant to a bona fide seniority, merit, or incentive wage system, or differentials in wages paid in different locations (as provided in Arizona, Missouri, Nebraska, Nevada, and Wisconsin); differences in terms and conditions of bona fide retirement, pension, and mutual benefit or insurance plans

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[1] Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming. Oklahoma provides for voluntary compliance in private employment; however, the law is mandatory with respect to State employment.

[2] Police regulations were amended June 10, 1965, to include Article 47, Order No. 67-768.

[3] Arizona, Hawaii, Idaho, Maryland, Massachusetts, Michigan, Missouri, Nebraska, Nevada, New York, Utah, Wisconsin, Wyoming. In addition, Colorado's fair employment practices law prohibits discrimination in apprenticeship and training programs. Washington has an executive order that bans discrimination based on sex in public employment. Alaska and Vermont fair employment practices laws prohibit discrimination in wage rates only, which makes them essentially equal pay laws.

(Hawaii, Michigan, Missouri, New York, Wisconsin, and the District of Columbia); and any law that controls employment of minors (Hawaii).

In Relation to Other State Labor Laws for Women

The fair employment practices laws of 3 States--Massachusetts, Missouri, and Nebraska--specifically provide that State labor law standards in effect for women are not invalidated by the FEP laws. In Massachusetts there is a specific reference to the code sections of State labor laws for women; in Missouri and Nebraska the reference is to other laws in the statute. The New York State Commission for Human Rights that administers its FEP law has issued rulings interpreting the "sex" provisions of its law. In addition, the Utah Industrial Commission, Anti-Discrimination Division, has issued guidelines on sex discrimination. (See appendix B, part II, for excerpt from the State law, the New York State ruling, and the Utah Sex Discrimination Guidelines.)

FEDERAL CIVIL RIGHTS ACT, 1964, AND STATE EMPLOYMENT PRACTICES LAWS THAT

Coverage and Unfair Labor

PROVISIONS OF LAW	FEDERAL	STATE				
	Civil Rights Act, 1964, Title VII	ARIZONA	DISTRICT OF COLUMBIA	HAWAII	IDAHO	MARYLAND
DATE OF SEX PROHIBITION						
Enacted	7/2/64	4/1/65	6/10/65	6/3/63	3/8/67	5/4/65
Effective	7/2/65	7/20/65	7/2/65 (Police regulation)	1/1/64	5/8/67	7/1/65
COVERAGE - EMPLOYER						
Private employment	X [1]	X	X	X	X	X
Minimum number of employees	25 after 3 yrs.[2]	20	---	---	---	25 after 3 yrs.[2]
Minimum period of employment of required number of employees	20 weeks in current or preceding calendar year.	20 weeks in current or preceding calendar yr.	---	---	---	20 weeks in current or preceding calendar yr.
Public employment	---	X	---	---	X	---
EXEMPTIONS						
Domestic service	---	---	X	---	---	---
Private social clubs	X	X	---	---	X	X
Family employment	---	---	X	---	---	---
Religious, educational, social, or nonprofit organizations	---	---	---	---	---	---
Religious educational institutions	X	X	---	---	X	X
Employees of an educational institution who further its work	X	X	---	---	---	X
Employees of a religious institution who further its work	X	X	X	X	---	X
Indian tribes	X	---	---	---	---	---
UNFAIR EMPLOYMENT PRACTICES						
Employer						
Hiring	X	X	X	X	X	X
Discharge	X	X	X	X	X	X
Compensation	X	X	X	X	X	X
Promotion	---	---	X	---	---	---
Terms, conditions, privileges of employment	X	X	X	X	X	X
Classification, limitation, segregation	X	X	X	X	---	---
Advertising	X	X	X	X	---	---
Training programs	X	X	X	---	---	---
Discriminate in any way	---	---	X	---	---	---
Other	X	X [9 10]	X [9]	X [9]	X [10]	X [9]
Union						
Membership (admission or expulsion)	X	X	X	X	---	---
Referral	X	---	X	---	---	---
Classification, limitation, segregation	X	X	X	---	---	---
Advertising	X	---	X	---	---	---
Training programs	X	X	X	---	---	---
Discriminate in any way	X	X	X	X	---	---
Other	X [10]	X [9 10]	X [9]	X [9]	X [7 10]	X [10]
Employment agency						
Referral	X	X	X	---	---	---
Classification, limitation, segregation	X	X	X	X	---	---
Advertising	X	X	X	X	---	---
Training programs	---	---	X	---	---	---
Discriminate in any way	X	---	X	X	---	---
Other	---	X [9 10]	X [9]	X [9]	X [7 10]	---
EXCEPTIONS						
"Sex" a bona fide occupational qualification	X	X	X	X	X	---
Preference to Indians on or near reservation	X	X	---	---	---	---
Antisubversive or security measures or actions	X	X	X	X	---	---
Differentials based on seniority, merit, or incentive system; or wages in different locations	X	X	---	---	---	---
Differentials from ability tests not intended to discriminate	X	X	---	---	---	---
Differentials in pay authorized by the Federal Equal Pay Act	X	---	---	---	---	---
Differentials in terms or conditions of any bona fide retirement, pension, employee benefit (death and survivor benefit), or insurance plan	---	---	X	X	---	---
Differentials from factors other than sex	---	---	---	---	---	---
Child labor laws	---	---	---	X	---	---
Preserves State labor laws for women	X [13]	---	---	---	---	---

See footnotes on page 6.

INCLUDE A PROHIBITION AGAINST DISCRIMINATION IN EMPLOYMENT BECAUSE OF SEX

Practices as of April 1, 1967

STATE--Continued

MASSACHU-SETTS	MICHIGAN	MISSOURI	NEBRASKA	NEVADA	NEW YORK	UTAH	WISCONSIN	WYOMING
5/3/65 8/1/65	12/21/66 12/21/66	6/30/65 10/13/65	8/3/65 8/3/65	2/24/67 7/1/67	6/28/65 9/1/65	3/18/65 5/11/65	9/27/61 10/10/61	3/1/65 7/1/65
X 6	X 8	X 25	X 25 after 3 yrs.[2]	X 15	X 4	X 25	X ---	X 2
---	---	---	20 weeks in current or preceding calendar yr.	20 weeks in current or preceding calendar yr.	---	---	---	---
X	X	X	---	---	X[3]	X	X[3]	X
X	X	---	X	---	X	X	---	---
X	---	---	X	X	---	X	X	---
X	---	---	X	---	X	---	X	---
X	---	X[4]	---	---	X	X[4]	X[5]	X[6]
X	---	---	X[4]	X	---	X[4]	---	---
---	---	---	---	---	---	X	---	---
X	---	---	X	X	X	X	---	---
---	---	---	X	X	---	---	---	---
X	X	X	X	X	X	X	X	X
---	---	---	---	---	---	---	---	---
X	---	X	X	X	X	X	X	X
---	---	---	---	---	---	---	---	---
X	X	X	X	X	X	X	X	X
---	---	---	---	---	---	---	---	---
---	X[7][9]	X[9]	X[9]	X[9]	X[9]	X[7][9]	---	X[7]
X	X	X	X	X	X	X	X	X
---	---	---	---	---	---	---	---	---
---	---	---	X	X	X	X	---	---
---	---	---	X	X	X	X	---	---
---	---	---	---	---	---	---	---	---
X	X	X	X	X	X	X	X	X
X[9]	X[9]	X[9]	X[9][10]	X[9][10]	X[9]	X[9]	---	---
---	X	X	X	X	---	X	---	---
X	X	---	X	X	X	X	---	---
X	X	X	X	X	X	---	---	---
---	---	---	---	---	---	---	X	X
X	X	X	X	X	X	X	---	---
X[9]	X[9][11]	X[9]	X[9]	X[9]	X[9]	X[9]	---	---
X	X	X	X	X	X	X	X	---
---	---	---	X	X	---	X	---	---
---	---	---	X	X	---	---	---	---
---	---	X	X	X	---	---	---	---
---	---	X	X	X	---	---	---	---
---	---	X[12]	X	---	---	---	---	---
---	X	X	---	---	X	---	X	---
---	---	---	---	---	---	---	X	---
---	---	---	---	---	---	---	---	---
X	---	X	X	---	---	---	---	---

FOOTNOTES

[1] Any activity, business, or industry engaged in or affecting interstate commerce.

[2] First effective year of act, 100 employees; second year, 75; third year, 50. Applies also to union membership, but not to employment agencies in Federal act.

[3] By practice. Board of Higher Education of City of New York v. Carter, 14 N.Y. 2d 138; 199 N.E. 2d 141 (1964). Wisconsin Biennial Reports, July 1, 1962-June 1964.

[4] Exempts only religious organizations or corporations and associations owned and operated by religious groups.

[5] Exempts only nonprofit fraternal or religious associations.

[6] Exempts only religious organizations or associations.

[7] In Utah and Wyoming also includes demotion, and in Michigan includes tenure.

[8] Also includes vocational school.

[9] Also includes: (a) discrimination because of person's opposition to an unlawful practice, or because person filed a charge, testified, or assisted at a hearing; (b) aiding, abetting, inciting, compelling, or coercing the doing of an unlawful act. District of Columbia: also preventing any person from complying with law. Maryland: only (a) applicable. Nebraska: only (a) applicable. Nevada: only (a) applicable. Utah: only (b) applicable but also includes obstructing any person from complying with the law, or committing an act in violation of the law. Michigan: also includes limiting employment opportunities through a quota or utilizing any employment agency, placement service, training school or center, labor organization or any other employment-referring source known to discriminate on the basis of sex.

[10] Causing or attempting to cause an employer to discriminate against an individual in violation of the law. In Idaho includes barring from employment.

[11] Also unlawful for an employment agency to conduct business under a name which directly or indirectly expresses or connotes any limitation, specification, or discrimination as to sex, except that any presently operating agency bearing a name that directly or indirectly expresses or connotes any such limitation, specification, or discrimination may continue to use its present name, if it displays, under such name wherever it appears, a statement to the effect that its services are rendered without limitation, specification, or discrimination as to sex.

[12] Also applies to differentials between a male and female in compensation, terms, conditions, or privileges of employment, if authorized by sec. 703 of the Federal Civil Rights Act or by State law.

[13] Nothing in title VII of the Federal Civil Rights Act of 1964, as amended, exempts or relieves any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any law that requires or permits the doing of any act that is an unlawful employment practice under title VII (sec. 708). See also sec. 1604.1(c), Guidelines on Discrimination Because of Sex, issued by the Equal Employment Opportunity Commission December 2, 1965, as published in the Federal Register, vol. 30, No. 232--December 2, 1965, and amended April 27, 1966 (appendix A).

Chapter XIV--Equal Employment Opportunity Commission

PART 1604--GUIDELINES ON DISCRIMINATION BECAUSE OF SEX

By virtue of the authority vested in it by Section 713(b) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-12(b), the Equal Employment Opportunity Commission hereby amends Chapter XIV of Title 29 of the Code of Federal Regulations to add a new Part 1604, entitled Guidelines on Discrimination Because of Sex. Because the provisions of the Administrative Procedure Act (5 U.S.C. 1003) requiring notice of proposed rule making, opportunity for public participation, and delay in effective date, are inapplicable to these interpretative rules, they shall become effective immediately and shall be applicable with respect to cases presently before or hereafter filed with the Commission.

The new Part 1604 reads as follows:

Introduction. The following guidelines are interpretations of the Commission published pursuant to Section 713(b) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-12(b), and Sec. 1601.30 of the Commission's regulations, 29 CFR 1601.30.

The Commission has proceeded with caution in interpreting the scope and application of Title VII's prohibition of discrimination in employment on account of sex. We are mindful that there is little relevant legislative history to serve as a guide to the intent of Congress in this area. Also, there is little light in the experience with state statutes. An overly literal interpretation of the prohibition might disrupt longstanding employment practices required by state legislation or collective bargaining agreements without achieving compensating benefits in progress towards equal opportunity.

These guidelines are an effort to temper the bare language of the statute with common sense and a sympathetic understanding of the position and needs of women workers. Nevertheless, where the plain command of the statute is that there be no artificial classification of jobs by sex, the Commission feels bound to follow it, notwithstanding the fact that such segregation has, in particular cases, worked to the benefit of the woman worker.

Probably the most difficult area considered in these guidelines is the relation of Title VII to state legislation designed originally to protect women workers. The Commission cannot assume that Congress intended to strike down such legislation. Yet our study demonstrates that some of this legislation is irrelevant to present day needs of women, and much of this legislation is capable, in particular applications, of denying effective equality of opportunity to women.

Title VII, which makes suspect any sex distinction in employment, and state protective legislation, which requires special treatment for women, represent competing value judgments which cannnot easily be harmonized. Clarification and improvements can however be achieved. We believe it desirable--even essential--that Congress and the state legislatures address themselves to this problem. State legislatures will find archaic provisions in their laws which should be updated. And the Congress may wish to determine how much weight should be given to outmoded laws whose practical effect today is not so much to protect as to disadvantage.

The many State commissions on the Status of Women, which have expressed concern that some protective laws may have lost their rationale, may wish to make appropriate recommendations to State legislatures. The Women's Bureau of the Department of Labor, which has been studying these laws, should soon have available a definitive analysis with special emphasis on the relevance of these laws to current technology and women's increasingly important role in society.

Sec.

1604.1 Sex as a bona fide occupational qualification.
1604.2 Separate lines of progression and seniority systems.
1604.3 Discrimination against married women.
1604.4 Job opportunities advertising.
1604.5 Employment agencies.
1604.6 Pre-employment inquiries as to sex.
1604.7 Relationship of Title VII to the Equal Pay Act.

AUTHORITY: The provisions of this Part 1604 are issued pursuant to Sec. 713(b), Civil Rights Act of 1964, 78 Stat. 265.

Sec. 1604.1 Sex as a bona fide occupational qualification.

(a) The Commission believes that the bona fide occupational qualification exception as to sex should be interpreted narrowly. Labels--"Men's jobs" and "Women's jobs"--tend to deny employment opportunities unnecessarily to one sex or the other.

(1) The Commission will find that the following situations do not warrant the application of the bona fide occupational qualification exception:

(i) The refusal to hire a woman because of her sex, based on assumptions of the comparative employment characteristics of women in general. For example, the assumption that the turnover rate among women is higher than among men.

(ii) The refusal to hire an individual based on stereotyped characterizations of the sexes. Such stereotypes include, for example, that men are less capable of assembling intricate equipment; that women are less capable of aggressive salesmanship. The principle of non-discrimination requires that individuals be considered on the basis of individual capacities and not on the basis of any characteristics generally attributed to the group.

(iii) The refusal to hire an individual because of the preferences of co-workers, the employer, clients or customers except as covered specifically in subparagraph (2) of this paragraph.

(iv) The fact that the employer may have to provide separate facilities for a person of the opposite sex will not justify discrimination under the bona fide occupational qualification exception unless the expense would be clearly unreasonable.

(2) Where it is necessary for the purpose of authenticity or genuineness, the Commission will consider sex to be a bona fide occupational qualification, e.g., an actor or actress.

(3) Most States have enacted laws or administrative regulations with respect to the employment of women. These laws fall into two general categories:

(i) Laws that require that certain benefits be provided for female employees, such as minimum wages, premium pay for overtime, rest periods or physical facilities;

(ii) Laws that prohibit the employment of women in certain hazardous occupations, in jobs requiring the lifting of heavy weights, during certain hours of the night, or for more than a specified number of hours per day or per week.

(b) The Commission believes that some state laws and regulations with respect to the employment of women, although originally for valid protective reasons, have ceased to be relevant to our technology or to the expanding role of the woman worker in our economy. We shall continue to study the problems posed by these laws and regulations in particular factual contexts, and to cooperate with other appropriate agencies in achieving a regulatory system more responsive to the demands of equal opportunity in employment.

(c) The Commission does not believe that Congress intended to disturb such laws and regulations which are intended to, and have the effect of, protecting women against exploitation and hazard. Accordingly, the Commission will consider limitations or prohibitions imposed by such state laws or regulations as a basis for application of the bona fide occupational qualification exception. However, in cases where the clear effect of a law in current circumstances is not to protect women but to subject them to discrimination, the law will not be considered a justification for discrimination. So, for example, restrictions on lifting weights will not be deemed in conflict with Title VII except where the limit is set at an unreasonably low level which could not endanger women.

(1) An employer, accordingly, will not be considered to be engaged in an unlawful employment practice when he refuses to employ a woman in a job in which women are legally prohibited from being employed or which involve duties which women may not legally be permitted to perform because of hazards reasonably to be apprehended from such employment.

(2) On the other hand, an employer will be deemed to have engaged in an unlawful employment practice if he refuses to employ or promote a woman in order to avoid providing a benefit for her required by law--such as minimum wage or premium overtime pay.

(3) Where state laws or regulations provide for administrative exceptions, the Commission will expect an employer asserting a bona fide occupational qualification pursuant to this paragraph to have attempted in good faith, to obtain an exception from the agency administering the state law or regulation.

Sec. 1604.2 Separate lines of progression and seniority systems.

(a) It is an unlawful employment practice to classify a job as "male" or "female" or to maintain separate lines of progression or separate seniority lists based on sex where this would adversely affect any employee unless sex is a bona fide occupational qualification for that job. Accordingly, employment practices are unlawful which arbitrarily classify jobs so that:

(1) A female is prohibited from applying for a job labeled "male," or for a job in a "male" line of progression; and vice versa.

(2) A male scheduled for layoff is prohibited from displacing a less senior female on a "female" seniority list; and vice versa.

(b) A seniority system or line of progression which distinguishes between "light" and "heavy" jobs constitutes an unlawful employment practice if it operates as a disguised form of classification by sex, or creates unreasonable obstacles to the advancement by members of either sex into jobs which members of that sex would reasonably be expected to perform.

Sec. 1604.3 Discrimination against married women.

(a) The Commission has determined that an employer's rule which forbids or restricts the employment of married women and which is not applicable to married men is a discrimination based on sex prohibited by Title VII of the Civil Rights Act. It does not seem to us relevant that the rule is not directed against all females, but only against married females, for so long as sex is a factor in the application of the rule, such application involves a discrimination based on sex.

(b) It may be that under certain circumstances, such a rule could be justified within the meaning of Section 703(e)(1) of Title VII. We express no opinion on this question at this time except to point out that sex as a bona fide occupational qualification must be justified in terms of the peculiar requirements of the particular job and not on the basis of a general principle such as the desirability of spreading work.

Sec. 1604.4 Job opportunities advertising.

(a) Help wanted advertising may not indicate a preference based on sex unless a bona fide occupational qualification makes it lawful to specify male or female.

(b) Advertisers covered by the Civil Rights Act of 1964 may place advertisements for jobs open to both sexes in columns classified by publishers under "Male" or "Female" headings to indicate that some occupations are considered more attractive to persons of one sex than the other. In such cases, the Commission will consider only the advertising of the covered employer and not headings used by publishers.

Because the provisions of the Administrative Procedure Act (5 U.S.C. 1003) requiring notice of proposed rule making, opportunity for public participation, and delay in effective date, are inapplicable to this interpretative rule, it shall become effective immediately.*

Sec. 1604.5 Employment agencies.

(a) Section 703(b) of the Civil Rights Act specifically states that it shall be unlawful for an employment agency to discriminate against any individual because of sex. The Commission has determined that private employment agencies which deal exclusively with one sex are engaged in an unlawful employment practice, except to

*As amended by F. R. Doc. 66-4609; Filed, Apr. 27, 1966; 8:45 a.m.

the extent that such agencies limit their services to furnishing employees for particular jobs for which sex is a bona fide occupational qualification.

(b) An employment agency that receives a job order containing an unlawful sex specification will share responsibility with the employer placing the job order if the agency fills the order knowing that the sex specification is not based upon a bona fide occupational qualification. However, an employment agency will not be deemed to be in violation of the law, regardless of the determination as to the employer, if the agency does not have reason to believe that the employer's claim of bona fide occupations qualification is without substance and the agency makes and maintains a written record available to the Commission of each such job order. Such record shall include the name of the employer, the description of the job and the basis for the employer's claim of bona fide occupational qualification.

(c) It is the responsibility of employment agencies to keep informed of opinions and decisions of the Commission on sex discrimination.

Sec. 1604.6 Pre-employment inquiries as to sex.

A pre-employment inquiry may ask "Male------, Female------"; or "Mr., Mrs., Miss," provided that the inquiry is made in good faith for a non-discriminatory purpose. Any pre-employment inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification or discrimination as to sex shall be unlawful unless based upon a bona fide occupational qualification.

Sec. 1604.7 Relationship of Title VII to the Equal Pay Act.

(a) Title VII requires that its provisions be harmonized with the Equal Pay Act (section 6(d) of the Fair Labor Standards Act of 1938, 29 U.S.C. 206(d)) in order to avoid conflicting interpretations or requirements with respect to situations to which both statutes are applicable. Accordingly, the Commission interprets section 703(h) to mean that the standards of "equal pay for equal work" set forth in the Equal Pay Act for determining what is unlawful discrimination in compensation are applicable to Title VII. However, it is the judgment of the Commission that the employee coverage of the prohibition against discrimination in compensation because of sex is co-extensive with that of the other prohibitions in section 703, and is not limited by section 703(h) to those employees covered by the Fair Labor Standards Act.

(b) Accordingly, the Commission will make applicable to equal pay complaints filed under Title VII the relevant interpretations of the Administrator, Wage and Hour Division, Department of Labor. These interpretations are found in 29 Code of Federal Regulations, Part 800.119-800.163. Relevant opinions of the Administrator interpreting "the equal pay for equal work standard" will also be adopted by the Commission.

(c) The Commission will consult with the Administrator before issuing an opinion on any matter covered by both Title VII and the Equal Pay Act.

Signed at Washington, D.C., this 24th day of November 1965.

FRANKLIN D. ROOSEVELT, Jr.,
Chairman.

[F.R.Doc. 65-12874; Filed, Dec. 1, 1965; 8:47 a.m.]

Relationship Between Fair Employment Practices Laws and Protective Labor Legislation for Women

I. *Federal Law--Statement Adopted by the Equal Employment Opportunity Commission, August 19, 1966, in Processing of Cases Involving State Protective Laws.*[1]

The Commission receives a significant volume of charges alleging discrimination based on sex, which involve the relation of Title VII to state protective legislation for women workers. In our Guidelines on Discrimination Because of Sex, published in November 1965, the Commission stated:

> "The Commission does not believe that Congress intended to disturb such laws and regulations which are intended to, and have the effect of, protecting women against exploitation and hazard. Accordingly, the Commission will consider limitations or prohibitions imposed by such state laws or regulations as a basis for application of the bona fide occupational qualification exception. However, in cases where the clear effect of a law in current circumstances is not to protect women but to subject them to discrimination, the law will not be considered a justification for discrimination." 30 F.R. 14927.

Since that time, in processing such cases, we have scrutinized carefully employer claims that discrimination was compelled by state law, and we have sought practical solutions which would enable employers to comply with both Title VII and state laws. To that end we have insisted that employers who rely on state law as a basis of unequal treatment of female employees seek such administrative exceptions as are available, and we have encouraged state legislatures and administrators to provide for more flexibility in their laws and regulations. We have, however, refrained from ruling squarely on the situation in which the conflict between Title VII's demand for equal employment opportunity and the requirements of state law is complete and unresolvable.

The Commission now has before it a case involving a charge of discrimination based on sex, in which the facts indicate that the female charging parties are being denied promotional opportunities and the opportunity to earn premium pay for overtime. The respondent employer admits these facts but urges as justification the provisions of the California Labor Code which provide that female employees may not be employed more than eight hours in any day or 48 hours in any week.

The Commission finds further that the employer's overtime requirements for the jobs sought by the charging parties are legitimate and bona fide and that no administrative exceptions are available under California law. There is no suggestion in the facts before us that the health or welfare of the charging parties would be adversely affected by permitting them to work in excess of 48 hours a week. This case, therefore, poses squarely the question whether Title VII supersedes and in effect nullifies a state law which compels an employer to deny equal employment opportunity to women. For the reasons which we set forth, we are not able at this time to resolve this question.

Over forty states have laws or regulations which, like California's, limit the maximum daily or weekly hours which women employees may work. What effect Congress intended Title VII to have upon such laws is not clear. An intent to alter drastically this pattern of state legislation should not lightly be presumed. However, the Commission believes that in fact these laws in many situations have an adverse effect on employment opportunities for women. To what extent this adverse effect is counterbalanced by the protective function which these laws serve this Commission is not presently in a position to judge. A choice between these two competing values could probably be avoided if these protective laws were amended to provide for greater flexibility, but the Commission cannot rewrite state laws according to its own views of the public interest.

The Commission's functions in processing charges under Title VII are limited to investigation, determining whether there is reasonable cause to believe a violation has occurred, and conciliation. While we have a duty to interpret

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[1] Commerce Clearing House, Employment Practices Guide, paragraph 16,903.

Title VII, we have no authority by such an interpretation to insulate employers against possible liability under state law, nor do we have authority to institute in the name of the Commission suits to challenge or restrain the enforcement of state laws.

Therefore, in the instant case and in cases which pose the same issues, the Commission is not prepared to make a determination with respect to the merits of the case, but shall advise the charging parties of their right to bring suit within 30 days under section 706(e) of Title VII to secure a judicial determination as to the validity of the state law or regulation. Such litigation to resolve the uncertainties as to the application of Title VII seems desirable and necessary, and the Commission reserves the right to appear as amicus curiae to present its views as to the proper construction of Title VII.

II. State Law--Examples of State Laws or Interpretations of Relationship Between State Fair Employment Practices Laws and State Protective Labor Laws for Women.

Excerpts from State FEP laws:

Massachusetts, Chapter 151 B of the General Laws, as amended by Chapter 397, Laws 1965

Sec. 7. The provisions of this chapter shall be construed liberally for the accomplishment of the purpose thereof, and any law inconsistent with any provisions hereof shall not apply, but nothing contained in this chapter shall be deemed to repeal any provision of chapter one hundred and forty-nine which establishes standards, terms or conditions of employment which are applicable to females....

Missouri, S.B. 235, Laws 1965, page 155

Sec. 8. Notwithstanding any other provision of this title, it shall not be an unlawful employment practice because of sex to differentiate in employment, compensation, terms, conditions, or privileges of employment between male and female employees if such differences are otherwise required or permitted by the laws of this state....

Excerpt from the Missouri Attorney General's Opinion, No. 82, of January 31, 1967:

[The Missouri Fair Employment Practices Act] prohibits discriminatory treatment based upon sex in employment matters, but also expressly recognizes that special treatment based on sex in regard to employment is not to be considered discriminatory if other laws require or permit it. The Missouri statutes mistaken by some to be in conflict with the Missouri Fair Employment Practices Act are not drafted so as to be discriminatory towards women. On the contrary these laws are designed to protect women. Hence women are not being provided with unequal treatment but rather they are given special treatment....

"It must be clearly understood [however] that the laws hereinbefore mentioned must be the real reason for denial of the employment opportunity and ... the Human Rights Commission contemplates close examination of each situation in order to determine that the employment is in fact covered by said laws...."

Nebraska, L.B. 656, Laws 1965, page 737

Sec. 24. Nothing contained in this act shall be deemed to repeal any of the provisions of the civil rights law, any other law of this state, or any municipal ordinance relating to discrimination because of race, creed, color, religion, sex, or national origin.

Excerpt from Rulings of New York State Commission for Human Rights Interpreting "Sex" Provisions:[2]

D. Bona Fide Occupational Qualifications

The law provides for a bona fide occupational qualification in certain cases.

1. Consideration may be given to sex as a bona fide occupational qualification in such circumstances, among others, as follows:

   (c) Where sex is a bona fide factor in fulfilling the provisions of other statutes, e.g., the New York City Adm.

[2] Source: Commerce Clearing House, Employment Practices Guide, paragraph 26,053 reports: The rulings are intended merely as "working presumptions" in carrying out the purposes of the law.

Code Sec. B32-196.0(b), which requires that only men masseurs may serve men and only women masseurs may serve women, or laws creating a differential in the conditions of employment for females, e.g., Labor Law Secs. 172, 173, 174, 175, and 176.2, which prescribe hours of work for women.

Excerpt from Utah Industrial Commission, Anti-Discrimination Division Sex Discrimination Guidelines, Sept. 19, 1966:[3]

[3]Source: Commerce Clearing House, Employment Practices Guide, paragraph 28,120.

Sec. 4. Bona Fide Occupational Qualifications--The Law provides for a bona fide occupational qualification in certain cases.

1. Consideration may be given to sex as a bona fide occupational qualification in such circumstances:

   c. Where sex is a bona fide factor in fulfilling the provisions of other Statutes. Section 34-4-1, Utah Code annotated 1953, which prohibits employment of women in mines and smelters.

Labor D.C. (WB 67-297)

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